IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (BAIL) NO. 403 OF 2006

Mr. Anant Yashwant Volvoikar,
R/o. House No. 161, Near T.B. Hospital,
Chincholem, Taleigao, Goa.
(Presently in Judicial Custody) ..... Petitioner/Applicant

V e r s u s

State of Goa,
through the P.I. Calangute Police Station,
Calangute, Goa. ..... Respondent.

Mr. S. D. Lotlikar, Senior Advocate with Mr. Ryan Menezes, Advocate for the Petitioner/Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the State/Respondent.

CORAM: N. A. BRITTO, J.

DATE: 16th January, 2007.

ORDER

The applicant herein is accused no.2 in Sessions Case no. 25/2006, which has been filed under Sections 302, 120 (b) I.P.C. and Sections 3 r/w Sections 25, 27 of the Arms Act, 1958, with the allegation that the applicant along with two other accused entered into a criminal conspiracy to cause death of Pravin Grover and pursuant thereto hired a contract killer namely accused no.3, who shot dead the said Pravin Grover.

2. The applicant/A2 and one Sunil Thukral/A1, a cousin of the deceased Pravin Grover, were the Directors of Candolim Developers Private Limited, who owned Perola Do Mar Resort situated at Candolim. On 11.07.2006, at about 18.40 hours, the said Pravin Grover was shot dead at the said resort and a complaint came to be lodged by one Raviraj Prabhu. The applicant/A2 came to be arrested on 12.07.2006 and since then has been in custody. The applicant/A2 and the said Sunil Thukral, have been strongly suspected by the family members of the deceased as the persons behind the said murder of having engaged the contract killer/A3, to murder the deceased. There is no dispute that the post mortem report has confirmed that the death of the deceased Pravin Grover was due to haemorrhagic shock as a result of fire arm injuries.

3. The chargesheet against the accused was filed on 07.01.2006, being C.C. no. 174/S/06/A and the same was committed to the Court of Sessions on 19.10.2006. It appears that thereafter, on or about 30.10.2006, an application came to be made to the Court of Sessions to obtain permission to carry out polygraph and brain fingerprinting tests upon both the accused and which was granted by the trial Court by Order dated 27.11.2006 on the same day when the application for bail filed by the applicant/A2 was rejected and since then it appears that the applicant was subjected to polygraph and brain fingerprinting tests at the Directorate of Forensic Science, Gandhinagar, Gujarat, as can be seen from the letter dated 18.12.2006 of the Directorate of Forensic Science, Gandinagar, produced by the learned Public Prosecutor for the perusal of this Court. The said letter/report opines that Sunil Thukral/A1 also requires to be subjected to the said

tests with a view to obtain corroboration so that investigations lead to a definite goal and it has been submitted by the learned Public Prosecutor that the next examination of the applicant/A2 is fixed on 15th instant.

4. Be that as it may, it appears that there were disputes and differences amongst the above said three Directors in connection with the running of the said Perola Do Mar Resort, Candolim, and as noted by the learned Sessions Judge in Para 8 of the Order dated 27.11.2006 and as stated by the widow of the deceased, there were disputes between her deceased husband and the applicant/A2 and the said Sunil Thukral/A1 over the said Resort and civil and criminal cases were pending in various Courts. As can be seen from the statement of the said widow Smt. Amita Grover, there were three cases pending in the Court regarding the dispute over the Resort and the said Sunil Thukral/A1 was threatening her husband that he would show her husband and the applicant/A2 was accompanying him, and, her deceased husband, had filed cases against the said two persons and it appears that at one stage, on 04.06.2005, Sunil Thukral/A1 had obtained possession of the said Resort by virtue of interim order from the Civil Court and, thereafter, by virtue of the order of this Court, the deceased had obtained possession of the said Resort. It also appears that there were three incidents taken place at Panaji, Miramar and Candolim, in which deceased was sought to be attacked and, according to Smt. Amita Grover, it is the first accused who attacked her husband through goondas and regarding which there were three cases pending and the details of which can be found in Para 8 of the reply filed on behalf of the respondent to the present application. The learned Sessions Judge denied bail to

the accused stating that the aforesaid facts indicated that the accused (*one does not know which of them*), had strong motive to cause death of Pravin Grover, though motive by itself could not be the proof of offence but it is certainly sufficient to raise a strong suspicion that the applicant/accused was involved in the commission of the crime, which is of serious nature. The learned Sessions Judge also observed that considering the nature of the allegations levelled, the possibility of the applicant/accused threatening the family members of the deceased as also intimidating and influencing the witnesses cannot be ruled out. The learned Sessions Judge also noted that the prosecution was permitted to take the applicant to Gujarat for brain mapping and considering all these factors, the applicant/A2 was not entitled to be released on bail.

5. Learned Senior Counsel on behalf of the applicant/A2 has submitted that there is distortion of facts in Para 15 of the Order of the learned Sessions Judge and that in fact the statements of Pushpa Gadekar, Atmaram and Sanjay Karmalkar, help the case of the applicant/A2 since they do not incriminate him in any manner. It is his submission that the said statements fortify the case of the applicant/A2. Learned Counsel further submits that till date, the prosecution has not been able to collect any material implicating the applicant/A2 in the conspiracy to murder the deceased except for raising suspicion against the applicant/A2 on account of the enmity which the applicant/A2 might have had with the deceased on account of the disputes regarding the possession of the said Resort. Learned Counsel further submits that motive is also a double edged weapon and could as well be used to falsely implicate a party. On the other hand, the learned Public

Prosecutor has referred to Para 23 of the reply filed on behalf of the respondents, and has submitted that if the applicant/A2 is released on bail, then there is every possibility that he may contact the absconding A3/Ashpak Bengre and may threaten the family members of the deceased Pravin Grover.

6. As already stated, the applicant/A2 was arrested on 12.07.2006 and the chargesheet was filed against all the three accused on 07.10.2006 and one fails to understand as to why the investigating agency did not carry out the required tests whether with the help of polygraph, brain fingerprinting or narco analysis and why they waited until 30.10.2006 to file an application to the Court of Sessions. Investigations after chargesheet is filed should be only by way of exception and not as a matter of rule. Although a period of six months has lapsed from the date of the arrest of the applicant/A2, all that the investigating agency has been able to collect by way of evidence against the applicant/A2 is a statement that on account of the dispute regarding the said Resort, Sunil Thukral/A1 was threatening the deceased that he would show him and the applicant/A2 was accompanying him. Apart from that, the investigating agency has not been able to collect any other evidence directly or indirectly to connect the applicant/A2 with the conspiracy to murder the deceased. Enmity need not necessarily show complicity. That being the case, in my view, further detention of the applicant/A2 would not be at all justified and he would be entitled to be admitted to bail since only on the allegation that there was previous enmity between the applicant/A2 and the deceased, the applicant/A2 could not be indefinitely detained in custody. Nevertheless, the bail to be granted could be conditional since the prosecution has fixed the tests to be

carried out by the Directorate of Forensic Science, Gandhinagar, Gujarat, on 15th instant.

7. In the circumstances, I find that this is a fit case to admit the applicant/A2 to bail. He shall be released upon execution of a bond of Rs.20,000/- with one surety in the like amount to the satisfaction of the learned Sessions Judge, Panaji, and with a further condition that the applicant/A2 shall attend the Directorate of Forensic Science, Gandhinagar, Gujarat, as and when required by the investigating officer for the purpose of carrying out the said tests by polygraph and brain fingerprinting, which appear to have remained inconclusive for reasons set out in the said letter/report dated 18.12.2006 of the Scientific Officer, Forensic Psychology Department of the Directorate of Forensic Science, Gandhinagar, Gujarat.

8. Before parting another observation is required to be made. The pronouncement of this order was deferred to 15-1-2006 since it was represented on behalf of the respondent that the applicant/A-2 would be taken to Directorate of Forensic Science, Gandhinagar, Gujarat on 15-1-2006 and it was again adjourned for today. The learned Public Prosecutor now informs that the applicant/A-2 could not be taken to Gandhinagar on 15-1-2006 as the learned Sessions Judge has not passed any orders on application seeking permission to take the applicant/A-2 to the Directorate of Forensic Science, Gandhinagar, Gujarat dated 24-12-2006. For the view I have taken no useful purpose would be served by further adjourning the application for bail filed by the applicant/A-2.

9. Application allowed on the above terms.

N. A. BRITTO,J.

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